

WEST VIRGINIA BROADBAND DEPLOYMENT COUNCIL

Tuesday, February 12, 2013 @ 9:00 a.m.

The meeting of the West Virginia Broadband Deployment Council was held in Building 6, Room 6A on Tuesday, February 12, 2013, at 9:00 a.m.

The following members participated:

Judge O'Hanlon
Dana Waldo
Jeff Wise
Michael Kelemen
Gale Given
Jim Nester

Jim Martin
Lee Fisher (via phone)
Elaine Harris
Rob Alsop
Dr. Fox
Chuck Henlein (designee for Dr. Phares)

Additional participants:

Andrea Rayl
Kate Campbell
Josh Clemente
Evelyn Bailey
Dan Page
Michael Hohn
Chris Morris
Mark Polen
Phil Weikle
Marcel Fortin
Brenda Williams

Tom Bennett
Eric Eyre
Sam Minardi
Reverend Patterson
Scott Cosco (via phone)
Brandy Messer (via phone)
Jack Smith (via phone)
Chris Clark (via phone)
Lee Ann Shreve
Jonathan Price

After a quorum was established, the Chair welcomed the Council and called the meeting to order at 9:03am.

Business

Judge O'Hanlon asked for the approval of the minutes from the January meeting of the Broadband Deployment Council. The Council approved the minutes with no objection.

Other Business

Kate Campbell, from the Attorney General's Office, introduced herself as the possible replacement for Doren Burrell. Rob Alsop was introduced as the new member representing the Governor.

A BTOP Summary was passed out to the Council.

Dr. Fox updated the Council on some “lessons learned” during the first round of grant applications/funding.

The Chair started discussion on the draft grant agreement. Dr. Fox made a motion to table the vote on approval for one week, motion was seconded by Dana Waldo; motion passed.

Jim Martin went over recommendations from his sub-committee.

1. *Require telecom and cable service providers to file FCC Form 477 with the state. This is necessary because the Council's access to Form 477 information (which assists with the development and maintenance of the WV broadband map) will end when BTOP ends in 2013.*

Amend the statute to add a new section as follows (depending on where it was inserted, it would require renumbering the following sections):

Provider reporting requirements

(a) In order to assist the council in accurately categorizing Type 1, Type 2 and Type 3 unserved areas throughout the state of West Virginia all communications service providers that are required to file FCC Form 477 with the FCC shall do the following:

1. File with the West Virginia Department of Commerce Geological and Economic Survey a copy of Form 477 as filed with the Federal Communications Commission.

(i) Copies of Form 477 for the period July 1 through December 31 are due March 1 the following year or within 30 days after filing at the FCC, whichever is later.

(i) Copies of Form 477 for the period January 1 through June 30 are due September 1 of the same year or within 30 days after filing at the FCC, whichever is late

Filings shall be made via a secure electronic transmission using the website provided for that purpose.

Elaine Harris made a motion to table this item, motion was seconded by Jeff Wise; motion passed.

2. **Broadband deployment projects §31-15C-2(a)(2), §31-15C-8 and §31-15C-9 and §31-15C-10.**
The way the definition of a broadband deployment project in §31-15C-2(a)(2) is written (use of the semi-colon) seems to indicate that only infrastructure projects are limited to the Type 2 and Type 3 areas and that demand promotion projects are not. But, use of the defined term “broadband deployment project” or “project” in §31-15C-9(a), §31-15C-9(c), and §31-15C-10(a) seems to indicate that demand promotion projects are likewise limited to Type 2 and Type 3 unserved areas. It's as though the legislature's initial thinking as stated in the definition got lost in translation as the legislation evolved. Demand promotion projects shouldn't be limited to categorized Type 2 and Type 3 areas, although demand promotion projects in those areas likely would generate consumer pressure and thereby provide an incentive for providers to offer

service; nevertheless, the low statewide adoption rate is a problem that needs to be addressed. Clarify these provisions as a housekeeping issue.

Amend §31-15C-2(a)(2) to read: "Broadband deployment project" means either (A) a project to provide broadband services to a type 2 and/or type 3 unserved area, as defined in section six of this article; or (B) a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

Amend §31-15C-8 to read: In order to implement and carry out the intent of this article, the council may take such actions as it deems necessary or advisable in order to stimulate demand through public outreach and education in unserved areas. The council shall consider the views, if offered, of affected members of the public, including private industry.

Amend §31-15C-9(a) to read: (a) In order to implement and carry out the intent of this article in type 2 and type 3 unserved areas, the council shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop and execute a broadband deployment project in a type 2 or type 3 unserved area. The guidelines shall include the following factors: (1) The cost-effectiveness of the project; (2) the economic development benefits of the project; (3) the availability of alternative sources of funding that could help finance the project, including, but not limited to, private grants or federal funding and the efforts undertaken to obtain such funding; (4) if the project requires the construction of a network, the applicant's ability to operate and maintain such network; (5) the degree to which the project advances statewide broadband access and other state broadband planning goals; (6) if the project involves the construction of a network, the proposed technologies, bandwidths, upstream data rates and downstream data rates; (7) the estimated date the project would commence and be completed; (8) how the proposed project compares to alternative proposals for the same unserved area with regard to the number of people served, the amount of financial assistance sought, and the long-term viability of the proposed project; and (9) any other consideration the council deems pertinent in evaluating requests for funding assistance.

Amend §31-15C-9(c) to read: The council shall create an application form that shall be used by all project sponsors requesting funding assistance from the council to plan, acquire, construct, improve or otherwise develop and execute broadband deployment projects in type 2 or type 3 unserved areas. The application form shall contain all advise applicants of information required by all state agencies that will be required to issue permits and certificates regarding the project. The application form shall require the project sponsor to set forth the proposed location of the project; if the project involves the construction of a network, the type(s) of unserved area(s) the project proposes to address,; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the project; information demonstrating the need for the project; that the proposed funding of the project is the most economically feasible and viable alternative to completing the project; and such other information as the council considers necessary.

Amend §31-15C-10(a), (b) and (c) to read: (a) Once the council has categorized unserved areas pursuant to section six of this article At a time and place determined by the council, project sponsors may submit applications for funding assistance. for pProjects involving the construction of a network may be submitted in those for unserved areas categorized by the

council pursuant to section six of this article. Upon receiving its Projects to promote demand may be submitted on a statewide or regional basis. If more than one completed application is received for the same project area, the council shall post notice with the Secretary of State of the first completed application for a categorized unserved area, the council shall post notice of such applications with the Secretary of State received for that project area. The notice shall be in the State Register for sixty days so as to allow for competing applications to be submitted to the council. Within thirty days of the close of the aforementioned sixty-day notice period, the council shall review all applications timely received during the sixty-day period and either: (i) Approve funding for one or more projects after determining that the funding would constitute an appropriate investment of public funds; or (ii) if the council determines that the application does not contain all of the required information or otherwise is incomplete, or that a proposed project is not eligible for funding assistance, or that the proposed project is otherwise not an appropriate or prudent investment of state funds, the council shall deny the project funding request. Prior to approving or denying any funding request, the council may seek the advice of any expert consultant retained pursuant to section seven of this article, but the council is not bound by that advice. The council shall also consider the views, if offered, of affected members of the public, including private industry.

Gale Given made the motion to table this item, motion was seconded by Jeff Wise; motion passed.

3. **Broadband §31-15C-2(a)(1).**

Change the definition of broadband to match the FCC's current definition, or, as preferred by the legislative subcommittee, the NTIA's speed tiers. The latter is consistent with the state broadband map, which is based on the NTIA's speed tiers. Note: Ensure consistency between the related provisions at §31-15C-2(b) and §31-15C-9(b).

Amend §31-15C-2(a)(1) to read: "Broadband" or "broadband service" means any service providing advanced telecommunications capability with either a minimum downstream data rate of at least 6 Mbps and a minimum upstream data rate of at least 200 kilobits per second 1.5 Mbps, that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with a minimum downstream-to-upstream data ratio of 10:1 for services with a downstream data rate of up to five megabits per second, and with a minimum upstream data rate of 500 kilobits per second for services with a downstream data rate of five megabits per second or greater with latency suitable for real-time applications and services such as VoIP and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas.

Michael Kelemen made a motion to table this item, motion was seconded by Dr. Fox; motion passed

4. **Authorize the Council to hire staff §31-15C-4.**

Give the Council the authority to hire staff (recommend a minimum executive director and an administrative assistant; technical staff would be prudent to have so there could be someone to work directly with the providers, oversee grant funded projects to ensure they comply with the requirements of the grant, and work with grantees to resolve technical issues that may arise during the course of project execution).

Amend §31-15C-4 to add a new subsection: (d) The council may appoint, subject to the approval of the governor, an executive director who shall hold office at the pleasure of the council. He or she shall perform such duties as may be assigned by the council. The executive director is entitled to compensation, as established by law, and reimbursement for the expenses within the amounts available by appropriation. The executive director may, with the approval of the council, hire employees, agents and consultants and prescribe their duties.

In addition, give the council authority to adopt whatever rules are necessary to carry out its purposes under article 15C.

Amend §31-15C-4 to add a new subsection: (e) The council may adopt such rules as are necessary in furtherance of its purpose.

Jim Martin made the motion to table this item, Michael Kelemen seconded; motion passed.

5. §31-15C-9.

Clean up to clarify which requirements apply to applicants and which are exclusive to the Council's application evaluation process. Note: the edits to this section suggested above include some language that would accomplish this.

Finally, the Council should consider requesting an annual appropriation to be used for grants and to cover the Council's operating costs.

No motions were made regarding this item.

6. *Seek a legal opinion as to whether §31-15C-4(a)(3) enables the Council to invest directly in infrastructure or broadband equipment that multiple providers could use to offer service. If no, then there's no insurmountable unaddressed operational need. If yes, then the statute is woefully inadequate in terms of funding and staffing the Council to undertake that level of enterprise. If this provision does authorize the council to invest directly in infrastructure or broadband equipment, and if the Council would like to implement the statute, then we recommend the following changes to the statute:*

Strike §31-15C-4(b)(5) in its entirety and insert a new §31-15C-4(b)(5) to read: Own, acquire, sell, trade, and lease equipment, facilities, and other infrastructure that could be accessed and used by multiple service providers, the state and local governments, including fiber optic cables, towers, shelters, easements, rights of way, and wireless frequency spectrum; provided that any agreement by the council to sell infrastructure that is capable of use by more than one service provider shall contain conditions that will ensure continued shared use or co-location at reasonable rates; and further provided that such direct investment is not undertaken in areas served by existing providers with comparable levels of broadband quality and speed. The council shall comply with the state's procurement policies in the purchase of real property and personal property. Nothing in this article shall be construed to grant power to the council to offer the sale of broadband services to the public.

Add a new section §31-15C-4(c) to read: The council shall establish and utilize an open and competitive process to solicit proposals from service providers to eliminate areas without

coverage through the development of telecommunications facilities and through binding commitments from service providers to expand service.

No motions were made regarding this item.

A meeting will be noticed for 10 days from the date of the meeting with the purpose of voting on the draft grant agreement and the tabled items presented by Mr. Martin's subcommittee.

Public Comment

There was no public comment.

Adjournment

The next meeting has been noticed for March 13, at 9:00 a.m. in Building 6, Room 6A. The call-in number and agenda will be provided prior to the meeting.

With no other business, the meeting adjourned at 10:17 a.m.